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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

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)
Rulemaking to Amend Parts 1, 2, 21, and 25)
of the Commission's Rules to Redesignate)
the 27.5-29.5 GHz Frequency Band, to)
Reallocate the 29.5-30.0 GHz Frequency Band,)
to Establish Rules and Policies for Local)
Multipoint Distribution Service and for)
Fixed Satellite Services)

CC Docket No. 92-297

COMMENTS OF AMERITECH

Ameritech respectfully submits these Comments regarding the Fourth Notice of Proposed Rulemaking¹ in this matter, hereby urging the Federal Communications Commission ("Commission") to adhere to its position as developed in this proceeding -- as well as in other proceedings involving new services which could potentially compete with local exchange and cable television services -- that the public interest will continue to be best served by full and open competition. To arbitrarily bar any class of potential competitors from the marketplace for LMDS services would serve no useful purpose. In fact, the imposition of arbitrary market allocations among service providers would be counterproductive, in that it would serve only to delay the availability of the broad array of telecommunications services which LMDS can deliver to consumers.

¹ In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, First Report and Order and Fourth Notice of Proposed Rule Making, FCC 96-311, rel. July 22, 1996 (hereinafter "Fourth NPRM").

For reasons unclear, the Commission has elected to reconsider its position regarding whether it should impose artificial restrictions on the eligibility of certain classes of potential LMDS service providers. Although the NPRM correctly notes that “(t)he current record of this proceeding, however, was developed prior to enactment of the Telecommunications Act of 1996 (‘1996 Act’)”² this fact does not explain why it might be appropriate to revisit this issue. Recent ex parte attempts of a few parties to use the passage of the 1996 Act³ as an excuse to raise, for one last time, the same threadbare arguments for erecting protective barriers to thwart full and fair competition⁴ should be recognized for the opportunistic maneuvering that they represent, and should be disregarded.

In light of the extensive record in this proceeding on the very same topic, the Commission should not ignore its own continuing conclusion that no exclusions of specific classes of potential LMDS service providers are justified. Despite full consideration of the matter based upon a record spanning more than four years, the Commission has never wavered from its initial determination that “(w)e do not propose to adopt cross-ownership restrictions unique to 28 GHz (LMDS) service.”⁵ As repeatedly pointed out by Ameritech⁶ and others, “full participation in an industry by all interested players continues to offer the best means to stimulate both robust

² Fourth NPRM, at 43 (¶ 105).

³ Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, February 1, 1996 (hereinafter “1996 Act”).

⁴ Fourth NPRM, at 48-50 (¶¶ 1209-124).

⁵ In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, RM-7872, RM-7722; Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration, FCC 92-538, rel. January 8, 1993 (hereinafter “Tentative Decision”), at 13 (¶ 33).

⁶ Comments of Ameritech re: Tentative Decision, (filed March 16, 1993), at 5.

competition and the full development and timely deployment of new and innovative services.”⁷

The relevance of Congress’ passage of the 1996 Act to the instant issue is likewise unclear. In fact, the very same basis upon which the Commission has chosen not to restrict LMDS license eligibility is embodied in the preamble of the 1996 Act, which seeks “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technology and services to all Americans by opening all telecommunications markets to competition ...”⁸ It is nothing short of ludicrous for those few parties seeking to reargue this issue to now contort Congress’ clear language in the 1996 Act in an attempt to shield themselves from full and fair competition.

As experience demonstrates, artificial barriers to competition have not worked in the past. The Commission’s attempts during the 1970’s to impose an artificial market structure in Computer Inquiry I⁹ were abandoned a decade later in Computer Inquiry II because they simply did not work. In that context, the Commission squarely rejected its proposed approach of restricting BOC eligibility from the then-emerging field of what it called “data processing” services, finding that the inefficiencies associated with eligibility bars far outweighed their value, placing “unnecessary costs ... on consumers and on society in general”, and “resulting in artificially restricting the supply of services

⁷ Ibid.

⁸ 1996 Act (emphasis added).

⁹ See, e.g., the Commission’s early attempts in Computer Inquiry I to implement “the concept of maximum separation” in In the Matter of Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Facilities, Docket No. 16979, Final Decision and Order, 28 FCC 2d 267 (1971), at 276 (¶ 24).

available to the public.”¹⁰ In its later consideration of Video Dialtone, the Commission again voiced its disapproval of rigid prohibitions barring classes of potential competitors from participating in an emerging marketplace. In that instance, the Commission specifically recommended that Congress amend the Communications Act to permit LECs to provide video programming, thereby benefiting consumers by “increasing competition spurring the investment necessary to deploy an advanced infrastructure, and increasing the diversity of services made available”¹¹ Even more recently, the Commission flatly spurned suggestions of an artificial eligibility bar to -- or even a separate subsidiary requirement for -- LEC participation in the emerging PCS marketplace. Doing so despite the same time-worn dire warnings of potential anticompetitive conduct¹², the Commission concluded that LEC participation in PCS could produce “significant economies” which “will promote more rapid development of PCS and will yield a “ range of PCS services at lower costs to consumers.”¹³ Most recently, the Commission reached the same conclusion -- via the same logic -- in the DBS proceeding, noting that an artificial bar would “fail to give the public the benefits that flow from vigorous competition.”¹⁴

¹⁰ In the Matter of Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry), Docket No. 20828, Final Decision, 77 FCC 2d 384 (1980), at 427 (¶ 111).

¹¹ In the Matter of Telephone Company- Cable Television Cross-ownership Rules, CC Docket No. 87-266, Second Report and Order, 7 FCC Rcd. 5781 (rel. August 14, 1992), at 5847 (¶ 135).

¹² Not surprisingly, one of the loudest proponents of an artificial PCS exclusion was MCI (see: In the Matter of Amendment of the Commission’s Rules to Establish New Personal Communications Services, Comments of MCI [filed November 9, 1992]), which now similarly argues for “a complete ban on LEC and MSO participation in auctions of LMDS spectrum or on the holding of an attributable interest in any license area which overlaps any of their local telephone or cable franchise area.” Fourth NPRM, at 49 (¶ 123).

¹³ In the Matter of Amendment of the Commission’s Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, Second Report and Order, rel. October 22, 1993, at 52 (¶ 126).

¹⁴ In the Matter of Revision of Rules and Policies for the Direct Broadcast Satellite Service, IB Docket No. 95-168, PP Docket No. 93-253, Report and Order, rel. December 15, 1995, at 29 (¶ 73).

In addition to these powerful lessons of experience, the record in this proceeding fully supports the Commission's decision not to impose artificial eligibility restrictions on any class of potential LMDS provider. As noted in the Fourth NPRM¹⁵, the record contains a significant amount of material on the very points under consideration.¹⁶ Despite the urgings of those who now attempt to use the passage of the 1996 Act as an excuse to revisit a myriad of issues long since addressed, that record points clearly toward the guiding principle of both the FCC and the 1996 Act: open, full and fair competition.

For the foregoing reasons, the Commission should reject out of hand this attempt by a few parties to artificially restrict participation in the emerging LMDS marketplace, and should instead keep to its steady course of letting the natural forces of competition work to the benefit of consumers and the American economy alike.

Respectfully submitted,



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¹⁵ Fourth NPRM, at 43 (¶ 105).

¹⁶ See, e.g., In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, Third Report & Order, rel. July 28, 1995, at 89-90 (¶¶ 97-99).